

REMARKS

Claims 21 to 40 are pending in the present application. The Office Action contends that this application includes claims directed to the following “species:”

- I “The species best illustrated by claims 21-26”
- II “The species best illustrated by claims 27-37”
- III “The species best illustrated by claim 38”
- IV “The species best illustrated by claims 39 and 40”

Applicant respectfully traverses the request for an election of species on several grounds.

First, the request for an election of species cannot be understood since the Office Action defines “species” by groups of claims. As plainly set forth in the M.P.E.P., “[c]laims are never species” and “[s]pecies are always the specifically different embodiments.” M.P.E.P. § 806.04(e) (italics in original). Since the “species” as defined in the Office Action are identified as claims and not identified as different embodiments, it is respectfully submitted that the request for an election of species is improper. Withdrawal of the request for an election of species is therefore respectfully requested.

Furthermore, the “general test as to when claims are restricted, respectively, to different species is the fact that one claim recites limitations which under the disclosure are found in a first species but not in a second, while a second claim recites limitations disclosed only for the second species and not the first.” M.P.E.P. § 806.04(f). It is respectfully submitted that the “species” as defined in the Office Action do not comport with this “general test.” Thus, it is respectfully submitted that the Office Action fails to properly identify “species” and that the request for an election of species should be withdrawn.

Moreover, if a “search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions.” M.P.E.P. § 803 (emphasis added). The present application is a continuation of U.S. Patent Application Serial No. 09/159,497 (“the ‘497 application”). The ‘497 application included claims relating to an interface device, claims relating to a battery monitoring system, claims relating to a method of initializing a plurality of probes in a battery

monitoring system and claims relating to a method for measuring the impedance of a plurality of batteries connected in series to form at least one string of batteries. No restriction requirement or request for an election of species was required during prosecution of the '497 application, and all of the claims of the '497 application were apparently searched and examined during prosecution of the '497 application. The present application includes claims relating to an interface device, claims relating to a battery monitoring system, claims relating to a method of initializing a plurality of probes in a battery monitoring system and claims relating to a method for measuring impedance of a plurality of batteries connected in series to form at least one string of batteries. Thus, in view of the search and examination of all claims of the '497 application, it is respectfully submitted that a search and examination of all claims of the present application can be made without serious burden. It is therefore respectfully submitted that the request for an election of species should be withdrawn.

Notwithstanding the foregoing, Applicant elects "[t]he species best illustrated by claim 38." The claim readable on "[t]he species best illustrated by claim 38" is claim 38.

Since claim 38 includes features analogous to features included in claim 18 of the '497 application, which was apparently fully searched and examined during prosecution of the '497 application, and since claims 39 and 40 include features analogous to features included in claims 19 and 20 of the '497 application, which were apparently fully searched and examined during prosecution of the '497 application, should the request for an election of species not be withdrawn, it is respectfully submitted that at least claims 39 and 40 should be examined with claim 38.


In view of all of the foregoing, it is respectfully submitted that the request for an election of species should be withdrawn and that all claims should be examined. All issues raised by the Examiner having been addressed, an early and favorable action on the merits is earnestly solicited.

Respectfully submitted,

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